

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

TONI GILLESS,

Plaintiff,

vs.

SUN LIFE ASSURANCE COMPANY
OF CANADA,

Defendant.

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No. 1:17-CV-00931

**COMPLAINT UNDER ERISA FOR RECOVERY OF
DISABILITY INSURANCE BENEFITS**

COMES NOWS, Jeffrey B. Diamond, attorney for Plaintiff, and for cause of action against the Defendant, States:

1. At all times material hereto, Plaintiff was a resident of Lea County, New Mexico. Defendant is a foreign insurance company authorized to do business in the State of New Mexico which sold and serviced a Long Term Disability policy No. 202789 to Plaintiff's employer, Louisiana Energy Services, LLC.

2. This action is brought pursuant to 29 USC § 1132, and § 502 (a) of the Employee Retirement Income Security Act of 1974. Jurisdiction and venue are proper in this Court pursuant to Subsection (e)(1) of 29 USC § 1132. This Complaint is timely filed.

3. Plaintiff has been disabled since July 14, 2015 and although Plaintiff filed a timely claim for benefits based on multiple disabling physical and mental impairments,

the Defendant denied the claim initially on February 24, 2016. At all times material hereto, the Plaintiff by reason of her physical and mental impairments was unable to perform the duties of her own occupation or any other occupation for which she was suited by reason of her age, education, and experience.

4. Plaintiff appealed the initial denial of benefits by letter dated August 15, 2016, and received a final decision from Defendant denying her claim on November 21, 2016. Plaintiff exhausted her administrative remedies, and this Complaint is timely filed.

5. On May 31, 2017 while preparing to file suit Counsel reviewed the complete Sun Life file requested by Plaintiff on June 27, 2016 and discovered that treatment records from Nor Lea General Hospital consisting of pages 5-175 and 180- 227 covering the period September 7, 2012, through July 28, 2016 were missing from the record sent to Plaintiff as well as 55 pages of records from Dr. Sadowski, a treating psychiatrist, covering the period January 4, 2016 through June 24, 2016. The Plaintiff sent the Defendant, timely, several medical record release authorizations. Plaintiff, nonetheless, sent the missing records to Defendant for a supplemental review which the Defendant refused to undertake. Such a position violated the fiduciary duty of Defendant to Plaintiff, thereby denying the Plaintiff the full and fair review of her medical records required by the subject insurance policy and ERISA.

6. On July 14, 2017, Plaintiff was awarded monthly Social Security Disability Insurance Benefits beginning January 2016, having been found disabled by Social Security on July 14, 2015. This claim was so well documented it did not require a hearing before an Administrative Law Judge and was decided by the Disability Determination Service on a Reconsideration Request.

WHEREFORE, Plaintiff request the Court award her damages against the Defendant for all disability income and life insurance benefits due Plaintiff since July 14, 2015 together with accrued pre-judgment interest thereon, costs, reasonable attorney fees, and such other and further relief as the Court deems just in the premises.

Respectfully submitted,

JEFF DIAMOND LAW FIRM

/s/ Jeffrey B. Diamond (9/11/17)

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